

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB 9/28/99

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Landmark General Corporation

Serial No. 75/265,925

J. Jay Guiliano of Hancock & Estabrook, LLP for Landmark General Corporation.

Craig D. Taylor, Trademark Examining Attorney, Law Office 107
(Tom Lamone, Managing Attorney).

Before Cissel, Hohein and Hairston, Administrative Trademark Judges.

Opinion by Hohein, Administrative Trademark Judge:

Landmark General Corporation has filed an application to register the mark "LANDMARK" for "calendars, diaries, appointment books and event planners."¹

¹ Ser. No. 75/265,925, filed on March 28, 1997, which alleges dates of first use of December, 1980. Although, at the time applicant filed its appeal, the goods in the application were identified as "calendars, diaries, appointment books and other date indicating goods," applicant requests in its appeal brief that the identification of its goods be amended to read: "calendars, diaries, appointment books and event planners." Inasmuch as the Examining Attorney, in his appeal brief, has so referred to applicant's goods and has raised no objection thereto, the application is accordingly deemed to have been amended by Examiner's Amendment to identify applicant's goods as set forth above.

Registration has been finally refused under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its goods, so resembles both of the "LANDMARK BOOKS" and design marks reproduced side by side below,

which are registered, by the same registrant, for "books,"² as to be likely to cause confusion, mistake or deception.

Applicant has appealed. Briefs have been filed, but an oral hearing was not requested. We affirm the refusal to register.

While applicant concedes in its brief that its mark and the registered marks "appear similar," applicant maintains that such marks "are for substantially different goods."³ In particular, applicant notes that, other than consisting of

² Respectively, Reg. No. 550,033, issued on October 23, 1951 with a disclaimer of the word "BOOKS," and setting forth dates of first use of October 12, 1950; second renewal; and Reg. No. 967,098, issued on August 28, 1973, and setting forth dates of first use of October, 1950; first renewal.

³ Although applicant also contends that the respective marks "have been used on different goods for approximately 18 years without any resulting confusion," there is no affidavit or other evidence in the record to support such a statement. Accordingly, applicant's contention that there have no incidents of actual confusion during a period of contemporaneous use of the respective marks will not be given further consideration.

printed material, its calendars, diaries, appointment books and event planners "do not share any other similarities" with registrant's books. According to applicant, its products pertain to recording data or indicating dates and are purchased by persons seeking to maintain written data for record keeping purposes. Registrant's goods, applicant argues, are not designed for such uses, but are instead the literary or printed works of specific authors. In addition, applicant insists that because its goods and those of registrant "are displayed to the consumer according to the content and use of the respective goods, there would be no overlap of consumer impression during the goods-selection process" and hence no likelihood of confusion.⁴

The Examining Attorney, on the other hand, correctly points out that it is well settled that the issue of likelihood of confusion must be determined in light of the goods set forth in the involved application and cited registrations and that, in the absence of any specific limitations therein, on the basis of all normal and usual channels of trade and methods of distribution for such goods. See, e.g., CBS Inc. v. Morrow, 708 F.2d 1579, 218 USPQ 198, 199 (Fed. Cir. 1983); Squirtco v. Tomy Corp., 697 F.2d 1038, 216 USPQ 937, 940 (Fed. Cir. 1983); and Paula Payne Products Co. v. Johnson Publishing Co., Inc., 473

⁴ While applicant also asserts that "the fact that [a] registration was [also later] granted for the mark LANDMARKS OF FREEDOM for goods identified as 'calendars' ... further indicates that 'books' are sufficiently different from 'calendars' so that a likelihood of confusion is remote," we note that a more plausible explanation for allowance of such registration is that the mark which is the subject thereof plainly is substantially different in commercial impression from the cited "LANDMARK BOOKS" and design marks.

F.2d 901, 177 USPQ 76, 77 (CCPA 1973). The Examining Attorney thus takes the position that "since there are no limitations in the [cited] registrations, it is reasonable to infer that registrant's 'books' could conceivably encompass applicant's 'diaries and appointment books.'" While applicant criticizes such viewpoint as being rather simplistic, applicant's "diaries" and "appointment books," strictly speaking, are in fact types of "books" and, as such, are encompassed within the scope of registrant's registrations.⁵ Applicant's goods consequently are in part identical to registrant's goods.⁶ If such goods,

⁵ We judicially notice, in this regard, that that Webster's New World College Dictionary (1997) at 380 defines "diary" as "1 a daily written record, esp. of the writer's own experiences, thoughts, etc. 2 a book for keeping such a record" and at lists "book" in relevant part as "1 a) a number of sheets of paper, parchment, etc. with writing or printing on them, fastened together along one edge, usually between protective covers b) a literary or scientific work, anthology, etc. so prepared, distinguished by length and form from a magazine, tract, etc. ... 3 a) a set of blank or ruled sheets or printed forms bound in a tablet, for the entry of accounts, records, notes, etc. [an account book]". In the same vein, The Random House Dictionary of the English Language (2d ed. 1987) at 548 defines the former as "1. a daily record, usually private, esp. of the writer's own experiences, observations, feelings, attitudes, etc. 2. a book for keeping such a record. 3. a book or pad containing pages marked and arranged in calendar order, in which to note appointments and the like," while the latter at 239 is similarly set forth in pertinent part as "1. a written or printed work of fiction or nonfiction, usually on sheets of paper fastened or bound together within covers. 2. a number of sheets of blank or ruled paper bound together for writing, recording business transactions, etc." It is settled that the Board may properly take judicial notice of dictionary definitions. See, e.g., *Hancock v. American Steel & Wire Co. of New Jersey*, 203 F.2d 737, 97 USPQ 330, 332 (CCPA 1953) and *University of Notre Dame du Lac v. J. C. Gourmet Food Imports Co., Inc.*, 213 USPQ 594, 596 (TTAB 1982), *aff'd*, 703 F.2d 1372, 217 USPQ 505 (Fed. Cir. 1983).

⁶ It is well established that a refusal under Section 2(d) of the statute is proper if use of the respective marks in connection with any of the goods set forth in the application and cited registrations would be likely to cause confusion. See, e.g., *Tuxedo Monopoly, Inc. v. General Mills Fun Group*, 648 F.2d 1335, 209 USPQ 986, 988 (CCPA 1981) [likelihood of confusion must be found if use of a mark for any

therefore, were to be marketed under the same or similar marks, confusion as to the source or sponsorship thereof would be likely to occur.

Turning, then, to consideration of the marks at issue, applicant asserts that while they are similar in view of the shared term "LANDMARK," the respective marks are nevertheless distinguishable "in terms of commercial impression" due to the presence of the generic word "BOOKS" in registrant's marks. We agree with the Examining Attorney, however, that neither such word nor the design elements in registrant's mark are sufficient to differentiate the registered marks from applicant's mark and that confusion as to origin or affiliation of the respective goods is likely.

In particular, as the Examining Attorney properly points out, while the respective marks must be compared in their entirety, it is nevertheless the case that, in articulating reasons for reaching a conclusion as to the issue of likelihood of confusion, "there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on consideration of the marks in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). For instance, "that a particular feature is descriptive or generic with respect to the involved

item in an applicant's application is likely to cause confusion with a mark for any of registrant's goods] and Shunk Mfg. Co. v. Tarrant Mfg. Co., 318 F.2d 328, 137 USPQ 881, 883 (CCPA 1963) [where there is a

goods ... is one commonly accepted rationale for giving less weight to a portion of a mark" 224 USPQ at 751.

Here, the word "BOOKS" in registrant's "LANDMARK BOOKS" and design marks plainly is a generic term for registrant's goods. It is therefore the term "LANDMARK" which serves as the dominant and source-distinguishing element in such marks. Although registrant's marks also contain various design elements, the script style of the word "LANDMARK" in both marks and the additional pictorial background in one of those marks are clearly subordinate features which would not serve to distinguish such marks from applicant's "LANDMARK" mark. Overall, the respective marks are substantially similar in sound, appearance and connotation and they create essentially the same commercial impression when used in connection with the respective goods.

Consequently, even if purchasers and prospective customers were to notice the differences in the marks, it would still be reasonable for them to believe, for example, that applicant's "LANDMARK" mark for, in particular, diaries and appointment books simply designates a new or additional product line emanating from, or sponsored by, the same source as the publisher of books which are sold under the "LANDMARK BOOKS" and design marks.

Decision: The refusal under Section 2(d) is affirmed.

R. F. Cissel

likelihood of confusion as to any of goods listed in an application, it is unnecessary to rule on other goods listed therein].

Ser. No. 75/265,925

G. D. Hohein

P. T. Hairston
Administrative Trademark Judges,
Trademark Trial and Appeal Board